

STAFF REPORT

To: Southern Shores Town Council
Date: January 9, 2024
Case: SUP-23-01
Prepared By: Wes Haskett, Deputy Town Manager/Planning Director

GENERAL INFORMATION

Applicant: Ginguite, LLC
P.O. Box 90
Kill Devil Hills, NC 27948

Applicant's Representative: Cathleen M. Saunders, P.E.
Quible & Associates, P.C.
P.O. Drawer 70
Kitty Hawk, NC 27949

Requested Action: Special Use Permit for a mixed use group development of commercial and residential buildings.

PIN #: 986606491459
Location: 6195 N. Croatan Hwy.
Zoning: C, General Commercial District and R-1 Low Density Residential District

Existing Land Use: "Commercial"

Surrounding Land Use & Zoning:

North- Residential; R-1, Low Density Residential District
South- Highway 158, Town of Kitty Hawk
East- Residential; C, General Commercial District
West- Ginguite Creek; OSW, Ocean and Sound Waters District

Physical Characteristics: Vacant

Applicable Regulations: Town Zoning Ordinance: Article III, Interpretation and Definition of Terms; Article IV, Application of Regulations; Article VI, General Provisions; Article VII, Schedule of District Regulations; Article X, Administration and Enforcement.

Town of Southern Shores CAMA Land Use Plan Update (adopted July 18, 2012)

ANALYSIS

The applicant seeks a Special Use Permit for a mixed use group development of commercial and residential buildings at 6195 N. Croatan Hwy. The proposed development consists of one residential building (east building) and one building with residential units, retail area, office space, and a restaurant (west building). The total number of proposed residential units is 36. A 6 ft. wide elevated boardwalk is proposed along Ginguite Creek and the Ginguite Creek Basin. Parking areas include the use of permeable pavement in order to be eligible for a maximum gross lot coverage of 67% instead of 60%. Currently, the proposed gross lot coverage is 63.8%. The

proposed net lot coverage for the residential buildings and parking spaces is 27.4%. The Applicant is proposing to use existing vegetation to satisfy the requirements for a Type A buffer along the northern property line adjacent to the All Saints' Episcopal Church property. A 6.7 ft. tall retaining wall and 20 ft. buffer with existing vegetation (to the extent feasible) is proposed along a portion of the eastern property line adjacent to Southern Shores Landing.

A 5 ft. vegetative buffer is proposed along the southern property line adjacent to the Hwy. 158 right-of-way which has been modified so that it does not come within 50 ft. of existing Dominion power poles. Proposed signage for the development includes two monument/freestanding signs and six "Commercial Parking Only" signs. There are 200 proposed parking spaces (including credit for 3 spaces for 3 bicycle racks), with 42 of them being permeable, and 199 spaces are required. Sanitary sewer for the development is to be collected via a gravity sewer network. The system will collect to an off-site lift station that will pump sewage to an existing wastewater treatment plant that is owned by the Applicant and currently serves Southern Shores Landing. A lighting plan and specifications have also been provided and the lighting plan shows that the proposed lighting does not exceed one footcandle of light at the property lines.

Mixed use group developments are permitted in the C, General Commercial District provided that a Special Use Permit is granted by the Town Council following a recommendation made by the Town Planning Board. In granting any Special Use Permit, the Town Council may recommend appropriate conditions and safeguards in conformity with Article X, Administration and Enforcement. Before granting any Special Use Permit, the Town shall make affirmative findings that:

- a. The applicant has met the requirements of the applicable provisions of the Town Chapter pertaining to Zoning, Subdivision Chapter, and all other applicable Ordinances.
- b. That the use as proposed will conform with the Town's Land Use Plan, and will be compatible with the area in which it is to be located, if developed in accordance with the conditions specified in the Chapter and additionally required by the Town Council as authorized by the Chapter.
- c. That the use will not materially endanger the public health and safety if located where proposed and developed according to the plan submitted.
- d. That the use as proposed will not overburden the Town Volunteer Fire Department fire-fighting capabilities and the County water supply capacity to the Town, as said facilities and capabilities will exist on the completion date of the Special Use for which the application is made.

RECOMMENDATION

The Town's Land Use Plan identifies the subject property as Commercial in the C, General Commercial zoning district which is consistent with the improvements proposed in the application. However, the subject property is adjacent to properties that are identified in the Land Use Plan as Residential. The Town's Land Use Plan contains the following Goal, Policies and Action Items that are applicable to the application:

- **Goal 2:** Protect, enhance and support land uses that are compatible with surrounding land uses and maintain the existing character of Southern Shores.
- **Policy 2:** The community values and the Town will continue to comply with the founder’s original vision for Southern Shores: a low-density residential community comprised of single-family dwellings on large lots (served by a small commercial district for convenience shopping and services located at the southern end of the Town). This blueprint for land use naturally protects environmental resources and fragile areas by limiting development and growth.
 - **Action Item 2-b:** The Town shall encourage the use of low impact development techniques and sound environmental preservation practices for all new development, remodeling and redevelopment within Southern Shores.
- **Policy 7:** Support stormwater management programs that reduce flooding and improve coastal water quality.
 - **Action Item 7-b:** Encourage the use of Low Impact Development (LID), vegetative buffers to filter stormwater, impervious surface limits, and innovative stormwater management alternatives to reduce runoff and to improve water quality.
- **Policy 26:** Promote open space, tree protection, and natural vegetation diversity.
 - **Action Item 26-b:** Encourage lot preparation methods that preserve natural vegetation and minimize clear cutting.

Town Code Section 36-207(c) establishes that Special Use Permits shall be subject to conditions and modifications relating to impacts on adjacent properties, transportation and transportation systems, transportation interconnectivity, stormwater, utilities and telecommunications facilities (including capacity), vegetation and other elements of the natural environment, noise, hours of operation, and other factors that the Town Council finds applicable; and additional regulations and requirements imposed by the Town Council, as provided in Article X of the Zoning Ordinance. Town Staff recommended that the Town Planning Board recommend conditional approval of the application to the Town Council with the following conditions:

1. The following approvals shall be issued prior to submittal of a Building Permit application:
 - a. Soil Erosion Sedimentation Control Plan Permit for land disturbance over 1 acre from the NCDEQ;
 - b. Stormwater Management Permit from the NCDEQ;
 - c. NCDOT driveway permit and/or encroachment application for work in a State right-of-way;
 - d. Modification to Permit No. WQ0017224 from the NCDEQ (tentative wastewater approval received);
 - e. Major CAMA Permit from the NCDEQ;
 - f. Review and approval of potable water distribution system modifications or extensions by the Dare County Water Dept. (tentative approval received);

- g. Receipts for payment of water connection fee from the Dare County Water Department;
 - h. Water Main Extension Permit from the NCDEQ.
 - i. Lot Disturbance/Stormwater Management Permit from the Town; and
 - j. Approval from the Dominion Energy Transmission Group.
2. Prior to submittal of construction drawings, an updated fire hydrant flow test must be conducted and witnessed by Town Staff.
3. Construction drawings shall demonstrate compliance with Needed Fire Flow requirements, and all other applicable Fire Code requirements.
4. The requirements in the NCDOT required traffic impact assessment or traffic study must be satisfied prior to submittal of a Building Permit application.
5. Maintain a 50 ft. setback from the eastern property line adjacent to Southern Shores Landing (applicable to buildings and other facilities such as parking spaces, incinerators, trash collection areas, etc.) and preserve the existing natural vegetative buffer.
6. Maintain a 50 ft. setback from the northern property line adjacent to All Saints' Episcopal Church (applicable to buildings and other facilities such as parking spaces, incinerators, trash collection areas, etc.) and preserve the existing natural vegetative buffer.
7. The applicant must strictly abide by all requirements of the Town Code and must also strictly comply with all other applicable local, State, and Federal requirements.

The Town Planning Board met on September 18, 2023, October 16, 2023, and November 20, 2023 to consider the application and unanimously recommended denial (5-0) of the application on November 20, 2023. The Board noted concerns with the existing wastewater treatment plant that would serve the proposed development, water quality, density (building area), the proposed 20 ft. buffer along the eastern property line instead of a 50 ft. buffer, traffic, stormwater given the amount of material that would have to be removed and filled, the 70 ft. Dominion Energy easement, and covenants as they relate to wastewater treatment. The Board also believed that the proposed development does not meet all applicable requirements (Chapter 32, Utilities) and that the development as proposed would not be compatible with the area in which it is to be located.

Initially, Town Staff recommended approval of the application with conditions. However, Town Staff now recommends denial of the application. The Applicant has indicated that they are not willing to accept all of the initially recommended conditions. In addition, Town Staff has concerns with the existing wastewater treatment plant that would serve the proposed development (see enclosed GWWTP LLC wastewater treatment plant documents). The Applicant owns the wastewater treatment plant (GWWTP LLC), but the franchise is still held by the previous owner. The NCDEQ permit issued to GWWTP LLC expired November 30, 2023. The Town approved the Applicant's request to replace the plant on January 3, 2017 but the plant has not been replaced. As documented by the Notices of Violation, Compliance Inspection Reports, and assessed civil penalties, the plant has not been operating as designed and permitted and additional capacity, or conditions for obtaining NCDEQ and NCUC approval, are not recommended at this time.